COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. NO. 01-31 – Phase II (Track B)

REQUEST: Department of Telecommunications and Energy Information Requests to AT&T Communications of New England, Inc.

DATE: September 27, 2002

DTE-ATT 3-1: Please refer to Verizon MA's Reply Comments of July 16, 2002, at p. 11: Verizon argues that a reduction of Intrastate Special Access charges to UNE-based levels would "present [ ] a strong incentive to tariff shop." Please explain whether you agree with this statement and why.

Respondent: Deborah Waldbaum

RESPONSE The full quote from Verizon's July 16, 2002, comments is as follows:

> The condition that the Department set for Private Line pricing flexibility raises a significant potential for arbitrage between state and federal Special Access services (Compliance Plan, at 3). The FCC has refused to permit carriers to replace Interstate Special Access with UNEs. A reduction of Intrastate Special Access rates to UNE levels presents a strong incentive to tariff shop and improperly convert Interstate Special Access services to Intrastate Special Access services, at UNE-based rates. This would conflict with both Department and FCC policies and could seriously erode Verizon MA's over $350 million in Interstate Special Access revenues.

As is evident from the foregoing passage, Verizon's complaint about "tariff shopping" is, in fact, a plea to the Department to protect some $350 million (presumably annually) it earns in monopoly profits from the sale of above cost special access circuits. Moreover, these revenues are generated by imposing excess costs on its competitors. The result is the inability of competitors to put pressure on Verizon's retail prices. In short, Verizon's complaint about "tariff-shopping" is a request to the Department to preserve its "tax" on Massachusetts business customers of some $350 million annually for the sole benefit of Verizon. Moreover,

Verizon has not even provided any reason or justification for why it should receive these revenues.

More to the point, the use to which CLECs intend to put special access circuits is not the use that the FCC was concerned about. The FCC permitted incumbents to impose use restrictions on UNEs to prevent interexchange carriers from using them in lieu of of interstate special access circuits *for purposes of offering interstate long distance service*.[1] In this case, the Department has ordered the reduction of intrastate special access rates so that such circuits may be used by CLECs *for purposes of offering intrastate and interstate services to business in competition with Verizon*. Indeed, to paraphrase our response to DTE-ATT 2-1, it is only fair that CLECs pay UNE rates for the special access circuits that Verizon relied on in its Massachusetts Competitive Profile ("MCP") in Phase I of this case as evidence of "local exchange competition." If such lines are to be considered local exchange competition for purposes of granting Verizon pricing flexibility (and they were), then such lines should be considered local exchange lines for purposes of UNE pricing. Verizon should not be able to have it both ways. (Indeed, Verizon's complaint about "tariff shopping" rings hollow, when it is Verizon that seeks to categorize the same circuits inconsistently to suit its own interests.)

The Department has jurisdiction to establish intrastate special access rates and has set those rates at the TELRIC cost of providing special access circuits in order to promote its policy of competition at the retail level. It is in the interest of state policy that CLECs purchase such circuits whenever they qualify for them. CLEC purchase of special access circuits at TELRIC rates creates a level playing field (but only to the extent that CLECs can obtain them, see response to DTE-ATT 2-1), which will ensure maximum competitive pressure on retail rates. At the same time, CLEC purchase of special access circuits at TELRIC rates ensures that Verizon recovers its incremental cost of providing the special circuit, plus a share of joint and common costs. Verizon has shown no right to recover more.

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[1] Although creating technical problems that were not considered by the FCC at the time***, the FCC's "safe harbors" and use restrictions were intended to implement the only real requirement that the FCC insisted on: prohibition of interexchange carriers convert[ing] special access services [used for long distance service] to combinations of unbundled loops and transport network elements[.]"*** *See*, Supplemental Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 9698, FCC 99-379 (Nov. 24, 1999), at ¶ 4. For a full discussion of the original purpose of the use restrictions and the role of Verizon and the other ILECs in obtaining the right to impose the overbroad restrictions now in Verizon's tariff, see *Initial Brief Of AT&T Communications Of New England, Inc.* (filed February 12, 2002, in Phase I of this docket), at 29-32.

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DTE-ATT 3-2: In response to Verizon MA's concern regarding Intrastate Special Access and "tariff shopping," please provide a proposal that would alleviate this perceived problem.

Respondent: Deborah Waldbaum

RESPONSE: It is not a problem to permit CLECs to purchase special access circuits at UNE prices when such circuits are used to provide intrastate and interstate services in competition with Verizon's services. Indeed, failure to do so will undermine the Department's policy of promoting retail competition.